

NO. 13-50156

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)
)
Plaintiff and Appellee,)
)
vs.)
)
JESSICA MEDINA)
)
Defendant and Appellant.)
_____)

APPELLANT'S EXCERPT OF RECORD

VOLUME I

APPEAL FROM THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE OTIS D. WRIGHT
UNITED STATES DISTRICT JUDGE

JOSEPH F. WALSH
California Bar No. 67930
Attorney at Law
205 S. Broadway, Ste 606
Los Angeles, CA 90012
(213) 627-1793
Email: Attyjoewalsh@aol.com

Attorney for Appellant
JESSICA MEDINA

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 10-00351-ODW-7, 27, 29

Date October 16, 2012

Present: The Honorable OTIS D. WRIGHT II, UNITED STATES DISTRICT JUDGE

Interpreter

Sheila English

N/A

N/A

*Deputy Clerk**Court Reporter**Assistant U.S. Attorney*U.S.A. v. Defendant(s):Present Cust. BondAttorneys for Defendants:Present App. Ret.

27) Jessica Medina

Not

X

27) Joseph F Walsh

Not

X

Proceedings:**MINUTE ORDER (IN CHAMBERS)**

The Motion To Suppress Wiretap Evidence from Target Telephone # 9 filed by 27-Medina [**1590**] together with joinders: 7-Rivera [**1593**] and 29-Prieto [**1594**], submitted on September 11, 2012 is **DENIED**.

Ample evidence of necessity had been shown to the issuing Court; and the arrest of Rivera did not negate the previous showings of probable cause and necessity.

_____: ____ 00
Initials of Deputy Clerk se _____

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

HONORABLE OTIS D. WRIGHT, JUDGE PRESIDING

UNITED STATES OF AMERICA,)

)

Plaintiff,)

)

vs.) NO: CR 10-351-ODW

)

ARMANDO BARAJAS, et al.,)

)

Defendants.)

)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, September 11, 2012

KATHERINE M. STRIDE, RPR, CSR
Official Court Reporter
Roybal Federal Building
255 E. Temple Street, Rm. 181-B
Los Angeles, California 90012

(213) 894-2187

APPEARANCES:

In behalf of the Government:

REEMA M. EL-AMAMY
MICHAEL DORE
ASSISTANT UNITED STATES ATTORNEYS
Criminal Division, United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 894-2434

In behalf of Defendant Armando Barajas:

LAW OFFICE OF WILLIAM HARRIS
BY: WILLIAM HARRIS
1499 Huntington Drive, Suite 403
South Pasadena, CA 91030
(626) 441-9300

In behalf of Defendant Juan Gil:

KESTENBAUM EISNER & GORIN
BY: ALAN EISNER
14401 Sylvan Street, Suite 112
Van Nuys, CA 91401
(818) 781-1570

APPEARANCES (CONTINUED) :

In behalf of Defendant Carlos Rivera:

LAW OFFICE OF ANGEL NAVARRO
BY: ANGEL NAVARRO
714 West Olympic Boulevard, Suite 450
Los Angeles, CA 90015
(213) 744-0216

In behalf of Defendant Juan Diaz:

LAW OFFICE OF THOMAS NISHI
BY: THOMAS NISHI
725 South Figueroa Street, 31st Floor
Los Angeles, CA 90017
(213) 629-9066

In behalf of Defendant Steven Espinoza:

LAW OFFICE OF MICHAEL MAYOCK
BY: MICHAEL MAYOCK
65 N. Raymond Avenue, Suite 235
Pasadena, CA 91103
(626) 405-1465

In behalf of Defendant Maria Lopez:

LAW OFFICE OF WILLIAM R. DOMNARSKI
BY: WILLIAM R. DOMNARSKI
6144 Omega Street
Riverside, CA 92506
(951) 334-0529

APPEARANCES (CONTINUED) :

In behalf of Defendant Jessica Medina:

LAW OFFICE OF JOSEPH F. WALSH
BY: JOSEPH F. WALSH
205 South Broadway, Suite 606
Los Angeles, CA 90012
(213) 627-1793

In behalf of Defendant Raul Prieto:

CEPHAS LAW FIRM
BY: DANA CEPHAS
72960 Fred Waring Drive
Palm Desert, CA 92260
(760) 844-2662

In behalf of Defendant Steven Vega:

LAW OFFICE OF LARRY M. BAKMAN
BY: LARRY M. BAKMAN
1901 Avenue of the Stars, Suite 200
Los Angeles, CA 90067
(310) 461-1555

In behalf of Defendant Salvador Gutierrez Martinez:

PEREZ & ASSOCIATES
BY: HECTOR C. PEREZ
3020 Old Ranch Parkway, Suite 300
Seal Beach, CA 90740
(562) 799-5524

1 **LOS ANGELES, CALIFORNIA; TUESDAY, SEPTEMBER 11, 2012;**

2 **10:11 A.M.**

3
4 THE CLERK: Remain seated and come to order.
5 This United States District Court is now in session, the
6 Honorable Otis D. Wright, United States District Judge
7 presiding.

8 Calling Item 1, CR 10-351, United States of
9 America versus Armando Barajas, et al. Also present are
10 Defendants No. 2, No. 7, No. 9, No. 12, No. 26, No. 27,
11 No. 29, No. 32, and No. 45.

12 Counsel, may I have your appearances, please?

13 MS. EL-AMAMY: Good morning, Your Honor. Reema
14 El-Amamy and Michael Dore on behalf of the
15 United States.

16 THE COURT: Good morning, Counsel.

17 MR. WALSH: Good morning, Your Honor. Joseph
18 Walsh appearing with Jessica Medina, who is present in
19 court on bond.

20 MR. DOMNARSKI: Good morning, Your Honor.
21 William Domnarski with Ms. Maria Lopez. There's a
22 waiver of the Defendant's presence on bond.

23 THE COURT: Thank you.

24 MR. CEPHAS: Good morning, Your Honor. Dana
25 Cephas for Raul Prieto, who is on bond, and he's in the

1 first row.

2 MR. NAVARRO: Good morning, Your Honor. Angel
3 Navarro appearing for Carlos Rivera, who is seated to my
4 right.

5 MR. NISHI: Good morning, Your Honor. Thomas
6 Nishi on behalf of Mr. Juan Diaz, who is present in
7 court.

8 MR. MAYOCK: Good morning, Your Honor. Michael
9 Mayock present with Mr. Steven Espinoza, who is present
10 in court.

11 THE COURT: Welcome, sir. I was in another
12 court in the other building and found out I was in the
13 wrong place. I apologize.

14 MR. BAKMAN: Good afternoon, Your Honor. Larry
15 Bakman appearing for Steven Vega, who is present in
16 court.

17 THE COURT: Welcome back.

18 MR. BAKMAN: Thank you, Your Honor. Good to be
19 back.

20 MR. PEREZ: Good morning, Your Honor. Hector
21 Perez appearing for Salvador Gutierrez Martinez, who is
22 present in custody, Your Honor.

23 THE COURT: Good morning.

24 MR. EISNER: Good morning, Your Honor. Alan
25 Eisner representing Juan Gil. He's present in court.

1 MR. HARRIS: Good morning, Your Honor. William
2 Harris on behalf of Armando Barajas. He's present in
3 custody.

4 THE COURT: Good morning to you all. All
5 right. We're going to have to go through this fairly
6 quickly for a number of reasons, and I think I'm going
7 to be encouraged to take a lot of the future motions
8 under submission.

9 With respect to the motion to sever brought by
10 Moreno and Barajas, Docket Nos. 1569 and 1602, as I
11 indicated when we last met, that motion or those motions
12 and the joinders will be granted. All I wanted to was
13 for there to be some consideration given through an
14 intelligent way of grouping the remaining cases. I have
15 received in writing at least the Government's input, but
16 that is all I've received.

17 Does that indicate that there is acquiescence
18 in the Government's grouping.

19 MR. CEPHAS: No, Your Honor.

20 THE COURT: Anyone? All right. Mr. Cephas.

21 MR. CEPHAS: Your Honor, I believe -- well,
22 first of all, we received the Government's proposed.

23 THE COURT: Don't cry. Just give whether or
24 not you've got another grouping.

25 MR. CEPHAS: What I was going to say is I need

1 a little more time to consider the -- their proposal
2 because I just got it yesterday afternoon, and I also
3 would like to see the Superseding Indictment so that I
4 know exactly what's there so that I can accurately
5 assess the proposal, and until I see what's in the
6 Superseding Indictment, I believe it would be difficult
7 for any of us to adequately assess the proposal and --
8 and, again, like I said, we just got it yesterday
9 afternoon. That's all Your Honor.

10 THE COURT: My understanding is that it is
11 going to remove a number of overt acts.

12 MS. EL-AMAMY: That is correct, Your Honor. As
13 the Government indicated, there will be minimal
14 revisions to the Indictment that will remove overt acts,
15 no additional violent crime and overt acts will be
16 included. There will be an additional charge brought
17 against Defendant Rivera related to his possession of a
18 firearm in furtherance of a drug trafficking crime.

19 THE COURT: That's the 924 you referenced?

20 MS. EL-AMAMY: Yes, Your Honor.

21 THE COURT: Okay.

22 MS. EL-AMAMY: The Government may also include
23 additional phone counts, Title 21, United States Code,
24 Section 843(b), but it will look substantially similar.

25 THE COURT: Okay. Mr. Cephas, does that change

1 your position at all?

2 MR. CEPHAS: No, Your Honor. My other, I
3 guess, initial point is I think six people -- my
4 client's in the first proposed grouping of six. I would
5 propose breaking that six up into two separate groups,
6 and the first grouping would be my client, Mr. Rivera,
7 and Jessica Medina.

8 MR. WALSH: And, Your Honor, Joseph Walsh for
9 Jessica Medina, that would be my comment also. I think
10 the divisions proposed by the Government is a little bit
11 heavy on the first trial and light on the second trial,
12 and I think that Mr. Cephas's proposal of severing his
13 client, my client, and Mr. Rivera in a single trial
14 would -- would be an appropriate grouping because all of
15 them are directly related to the investigation
16 surrounding the wiretap of Target Telephone No. 9.

17 THE COURT: All right. So is -- is -- is your
18 concern primarily with the numbers? My concern is
19 primarily with the evidence. I would like to have those
20 who were going to have to defend common evidence be
21 tried together regardless of the numbers.

22 That was a question to you.

23 MR. CEPHAS: And, Your Honor, I believe that
24 the common evidence would be with Medina, Rivera, and
25 Prieto. I think if they try us with those other three,

1 it's just going to result and spillover from those three
2 onto my client, Mr. Rivera, and Ms. Medina that really
3 has no relationship to the allegations in the
4 Indictment. That is why I think that is a fair
5 proposal.

6 THE COURT: Okay.

7 MS. EL-AMAMY: Your Honor, respectfully, the
8 Government disagrees. What I think the Defendants are
9 trying to do is take an extremely narrow view of this
10 case. However, the Defendants' participation in this
11 conspiracy is much broader than what's being portrayed
12 in just a limited -- what they'd like to do is just look
13 at August, 2009. However, Carlos Rivera has been a
14 long-time member of the Black Angles gangs. During a
15 conversation with at least one narcotics trafficker, he
16 threatened him saying "I'm a Black Angels gang member.
17 His co-conspirator better not be informing to law
18 enforcement on me." Defendant Prieto owns or lives at
19 the residence where a firearm transaction took place
20 where Carlos Rivera admits in a telephone conversation
21 that he was getting a firearm for the gang at that
22 location because he was on parole. After
23 Defendant Rivera was arrested, Defendant Medina gets on
24 the phone with one of leaders of the Black Angels gang.
25 Defendant Navarro, then, talks about who might be

1 informing with law enforcement and also talks about the
2 fact that other Black Angels gang members have been
3 arrested. She takes steps to protect the conspiracy as
4 well as to continue the drug trafficking activity. I
5 think in this case limiting it to just these three
6 Defendants doesn't serve necessarily any judicial -- any
7 purpose for judicial economy. The same evidence will be
8 presented at their trial as would be other Black Angel
9 gang members' trials. Additionally, limiting
10 instructions can be taken to cure any spillover effects
11 if there are any, which the Defendants have not shown,
12 and so the Government maintains that at trial with, you
13 know, Defendant Barajas, Defendant Maria Lopez, and
14 Defendant Prieto and Medina and Rivera would be
15 appropriate.

16 MR. CEPHAS: Your Honor, could I simply suggest
17 that the Defendants have a chance, perhaps a week, to
18 meet and prepare a written response?

19 THE COURT: Mr. Cephas, did I not ask you all
20 to do that when we all last met?

21 MR. CEPHAS: Your Honor --

22 THE COURT: Yes, I did.

23 MR. CEPHAS: It was my understanding that the
24 Government was going to give us a proposal that we could
25 respond to.

1 THE COURT: I didn't -- I didn't say anything
2 about that. I told you all to get together and work out
3 something that makes sense before we met today.

4 MR. CEPHAS: And to the extent it was going to
5 be a joint effort, then I would have expected the
6 Government to reach out to the Defendants. That never
7 happened. All we -- we just got a proposal dropped on
8 us, Your Honor.

9 THE COURT: What have you -- what have you all
10 done, the Defendants, separately? Separate and apart
11 from the Government, what have you all done in deciding
12 among yourselves what is an intelligent grouping?

13 MR. CEPHAS: Your Honor, we didn't do anything.

14 THE COURT: Okay. Good. Thank you.

15 Well, anyway, like I said, I'm going to grant
16 the motion. The difficulty that I have, of course, is
17 that I'm not in a position of knowing what evidence is
18 going to be presented. I'm afraid that information
19 resides with the Government. The Government knows how
20 it's going to put on its case. So for now, then, seeing
21 I don't have a really contrary proposal, for now, I'm
22 going to go along with the Government's proposal.

23 All right. Let's move on, then, to -- I'm not
24 sure of the next in any order, but the motion for an
25 order requiring that the Government provide a witness

1 list thirty days before trial. This is -- I guess this
2 is yours Mr. Cephas, Docket No. 1581.

3 Why do you feel that the Government is
4 obligated to provide you with a witness list?

5 MR. CEPHAS: Well, first, Your Honor, the
6 Government did -- has agreed to do that but --

7 THE COURT: Answer my question.

8 MR. CEPHAS: I believe that we are entitled to
9 it in order to adequately prepare because --

10 THE COURT: No, no, no. That means you would
11 like it. I want to know why you feel that you're
12 entitled to have it.

13 MR. CEPHAS: I believe that, if my clients are
14 to have a fair trial, that I have to have a witness list
15 prior to trial. I don't believe --

16 THE COURT: Why don't you give me your
17 recitation to a rule.

18 MR. CEPHAS: I am -- I am relying --

19 THE COURT: Why don't you just simply say there
20 is no rule, there is no requirement that they provide
21 you with a witness list.

22 MR. CEPHAS: Of course, there's not. It's in
23 the --

24 THE COURT: Well, why don't you just say that.

25 MR. CEPHAS: It's in my motion that the Court

1 has discretion to order it.

2 THE COURT: Okay. Now listen. Here's the
3 problem that I have with an earlier order. I would not
4 have issued that order requiring the disclosure of
5 cooperating witnesses. To the extent that the
6 Government has already made disclosures, fine. I'm not
7 requiring that the Government make any further
8 disclosures of any kind, non-expert, non-expert
9 witnesses. Okay. So that motion is denied.

10 MR. EISNER: Your Honor, may I be heard on
11 that?

12 THE COURT: Yes, go ahead, Mr. Eisner.

13 MR. EISNER: I do acknowledge that this was a
14 motion that was initially filed by Mr. Cephas and also
15 by Mr. Solis on behalf of Mr. Barajas.

16 THE COURT: And you didn't file a joinder.

17 MR. EISNER: I believe I did, Your Honor.

18 THE COURT: Who's your client?

19 MR. EISNER: Mr. Gil.

20 THE COURT: Mr. Gil. Yes, you did. 1610.
21 Okay. Go ahead.

22 MR. EISNER: In the Government's reply, the
23 Government agreed to give a witness list, and I think
24 that that acknowledgement -- first of all, it's a
25 appreciated; second of all, it's an acknowledgement of

1 the length and the breadth and the difficulty of
2 defending a case like this. We're talking about fifty
3 different people --

4 THE COURT: Uh-huh.

5 MR. EISNER: -- who, at various times, are
6 pleading out and whose conduct may or may not be part
7 the evidence in the case.

8 THE COURT: Uh-huh.

9 MR. EISNER: We're talking about conduct that
10 spans over a decade or decades. We're talking about
11 violent conduct. We're talking about wiretaps. To have
12 the Defendants go in on day one without some degree
13 of -- of knowing the order of the evidence, really puts
14 them at a handicap because of the unique nature of a
15 RICO case. Again, we're talking about months or years
16 of wiretaps, and -- and there are so many moving
17 parties. I just --

18 THE COURT: How do you -- that was raised --
19 maybe it was raised in your papers. You wanted really
20 to know the order of the evidence, and I'm wondering how
21 are you going to get that unless the Government decides
22 to give you its playbook.

23 MR. EISNER: I'm not asking for a playbook,
24 Your Honor. I'm asking for a witness list, which the
25 Government has already agreed to provide thirty days in

1 advance of trial.

2 THE COURT: Okay. Why aren't you happy with
3 that? Why aren't you happy with whatever the Government
4 gives you?

5 MR. EISNER: Well, I think there are due
6 process concerns in a case like this that require some
7 orderly disclosure of what the anticipated evidence will
8 be.

9 THE COURT: Uh-huh.

10 MR. EISNER: These are -- I asked that
11 Your Honor acknowledge these are unique cases. It's not
12 every day that you sit in a court among what starts out
13 as fifty but dwindles down to thirteen or so Defendants
14 over the course of two years.

15 Another reason, Your Honor, is because, as you
16 can see from some of our other motions, within the last
17 thirty days -- thirty to forty days, there has been over
18 a thousand pages of new, brand new material provided to
19 the Defendants. When is that going to come in? In the
20 beginning or the end? So I don't want to belabor the
21 point, Your Honor, just to emphasize the Government's
22 already agreed to give a witness list thirty days before
23 trial. They didn't address the exhibit list issue.

24 I've put in my reply the reasons why an exhibit list, I
25 think, is fair and appropriate. The Government is

1 silent on that.

2 THE COURT: No, I do want to talk about that.

3 Ms. El-Amamy, what's wrong with the Government,
4 perhaps, even on a rolling basis, continuing to update
5 it's exhibit list? I understand that, up until the
6 night before trial, that thing may still be modified,
7 but what's wrong with, as you modify it, perhaps, making
8 it available to Defense Counsel?

9 MS. EL-AMAMY: Well, Your Honor, typically I
10 don't think that I would have an issue with it.
11 However, the posture of this case has put the Government
12 in a difficult situation. There have been -- the
13 Government's made its best effort to disclose things
14 early, and when it fails to disclose some of those,
15 what's represented not just to the Court but to
16 Government counsel personally in a barrage of e-mails is
17 overwhelming.

18 THE COURT: I can imagine, and I need to make
19 it clear -- well, what seems to be happening is the
20 Government is being criticized and basically persecuted
21 for making evidence available, and they continue to make
22 evidence available on an ongoing and rolling basis. I
23 would think that that would be a good thing, but what
24 the Government, then, is being criticized for is now
25 you've got to look at this evidence and maybe alter

1 your -- your strategy somewhat. I would think that
2 continuing to make things available as it becomes known
3 to the Government is something that you would desire.
4 So I can understand counsel becoming somewhat frustrated
5 and, perhaps, even take the Government personally when
6 you're called into Court to defend these things, and
7 literally the basis for some of these motions is that so
8 much material seems to be produced. I think it's a good
9 thing that the material continues to be produced. So
10 don't use that as an argument in the future. All right.

11 All right. Ms. El-Amamy, I'm going to ask you
12 to at least every couple of weeks would you please
13 update your exhibit list. I understand you'll be adding
14 things. You may be removing things, but I think it's --
15 it's only -- well, I would appreciate if you would do
16 it.

17 MS. EL-AMAMY: Yes, Your Honor.

18 THE COURT: All right.

19 MR. CEPHAS: Your Honor, could I ask for a
20 clarification?

21 THE COURT: Yes, and I was about to do that
22 now. With respect to the witnesses, I am not making an
23 order that the Government produce or identify any
24 additional non-expert witnesses that it has not already
25 identified. I am frankly concerned about witness

1 safety.

2 With respect to the request for the exhibit
3 list -- you've heard the order -- I'm asking that every
4 couple of weeks that the Government provide Defense
5 Counsel any changes made to the exhibit list.

6 With respect to the motion for discovery of
7 information regarding the legal drug allegations and
8 gang membership --

9 MR. EISNER: I'm sorry, Your Honor. Can I ask
10 for a clarification on behalf of Mr. Gil. You said the
11 non-cooperating witnesses.

12 THE COURT: No, non-expert.

13 MR. EISNER: All right. Are we entitled to a
14 list of any -- I'm sorry, Your Honor. Which witnesses
15 are we entitled to be disclosed of thirty days before
16 trial?

17 THE COURT: Entitled to?

18 MR. EISNER: Well --

19 THE COURT: Okay. The Government -- let me do
20 it again. The Government has already identified and
21 disclosed to you a number of witnesses. I don't think
22 the Government was required to do that, and I'm not
23 ordering that the Government make any further disclosure
24 of non-expert witnesses because I have two concerns,
25 they're not legally required to do it and I'm also

1 concerned by the safety of these witnesses. Okay. Is
2 that clear?

3 MR. EISNER: Right. I understand the safety
4 issue with respect to cooperators, but are you also not
5 having them provide a list of law enforcement officers,
6 let's say?

7 THE COURT: Okay. Let me put it again. Other
8 than witnesses already identified by the Government, I'm
9 not ordering that the Government disclose any additional
10 non-expert witnesses, period.

11 MR. EISNER: Thank you.

12 THE COURT: Okay.

13 MR. BAKMAN: Your Honor, if I might. Before we
14 leave that, the only --

15 THE COURT: We have left that, Mr. Bakman.

16 MR. BAKMAN: I'm sorry, Your Honor.

17 THE COURT: We have left that.

18 MR. BAKMAN: All right.

19 THE COURT: All right. All right. This is
20 Mr. Prieto's motion, Docket No. 1582. This is with
21 respect to illegal drug allegations and gang membership.
22 The Government has already indicated that there is no
23 intention to introduce any 404(b) evidence. So this
24 motion has been rendered moot, and on that basis, it's
25 denied.

1 MR. CEPHAS: Your Honor.

2 THE COURT: Yeah.

3 MR. CEPHAS: It seems to me that the Government
4 has not indicated that it will not admit evidence
5 related to this vague allegation that my client was --
6 was storing drugs. Could I at least ask the Government
7 to clarify that that's not coming in?

8 THE COURT: The clarification I got from the
9 Government, or the explanation I got from the
10 Government, this isn't going to be used for 404(b)
11 purposes but to establish elements of the offense.

12 MR. CEPHAS: Well, Your Honor, the problem I
13 have with preparing a defense for this is they've still
14 not provided me any discovery. I don't know -- I don't
15 know what types of drugs, when. I don't know where this
16 drug -- this alleged drug happened. They won't identify
17 the alleged informant who, perhaps, had -- it's not in
18 the Indictment. So it's a very difficult -- well, it's
19 impossible for me to prepare unless I get something else
20 if the Court is saying they have carte blanche to bring
21 it in as it's inextricably intertwined, and that's why I
22 don't understand. If they can bring it in, then I need
23 to have some advance notice of it if I'm going to have a
24 fair trial. That's -- that's my problem, and right now,
25 I have no advance notice of it other than a vague

1 statement of some drug at some time, and that's just not
2 enough.

3 THE COURT: That's a different motion.

4 MR. CEPHAS: Well --

5 THE COURT: Well, bring that motion.

6 MR. CEPHAS: I brought that motion, Your Honor.

7 THE COURT: All right.

8 MR. CEPHAS: And the Government responded in
9 one of their response. And a footnote -- they footnoted
10 the vague response. The cooperating witness did not say
11 kilogram, and the Government recalls conveying
12 information that it was a large quantity, not a
13 kilogram. That doesn't tell me anything. I don't know
14 what they're referring to. I don't know when. I don't
15 know if this is a year ago, five years ago, ten years
16 ago. I don't know anything about this.

17 THE COURT: Have you sent the Government an
18 e-mail asking for clarification on that point?

19 MR. CEPHAS: Yes, Your Honor.

20 THE COURT: Okay. Try it again. Yes.

21 MS. EL-AMAMY: Your Honor, that -- that
22 information comes from a cooperating witness. As in the
23 Government's paper, Defendant Prieto was provided an
24 opportunity to have discovery related to that over a
25 year ago. He didn't show up at the reverse proffer

1 neither did his counsel.

2 THE COURT: Okay.

3 MS. EL-AMAMY: So it's a cooperating witness,
4 which the Court's order is not discoverable.

5 THE COURT: All right.

6 MR. CEPHAS: And, Your Honor, to be accurate, I
7 told her my client wasn't coming. I would show up for
8 the reverse proffer, and she said there was no point in
9 it because it was for him.

10 THE COURT: Okay.

11 MR. CEPHAS: I was there for the discovery.
12 She did not want to give it to me. So to say that
13 they've been offering it, that's not true.

14 THE COURT: This is not for your benefit. It's
15 for your client's benefit. If your client's not
16 interested, your client's not interested.

17 Okay. Let's move on.

18 So 1582 is denied.

19 Next, the motion to preclude the Government's
20 use of evidence produced after April 30th of 2012. This
21 is also yours, sir. This is Docket No. 1632. What
22 troubles me about this one is the failure to initiating
23 a meet and confer to attempt to resolve this -- this
24 discovery issue without the need for judicial
25 intervention.

1 MR. CEPHAS: And, Your Honor, I e-mailed
2 Ms. El-Amamy all the time. When she wants to responds,
3 she responds. When she doesn't, she doesn't respond. I
4 e-mailed her. She didn't respond. I filed the motion
5 as I indicated.

6 THE COURT: You did. You did. I understand.
7 I read it. You sent her an e-mail 7:00 P.M., and I
8 guess you didn't get a response after 7:00 P.M., and the
9 next morning you filed a motion. Right. Okay. I don't
10 consider that a good faith attempt to meet and confer in
11 an effort to resolve the motion without bringing it to
12 court. On that basis alone, your motion is denied.

13 Lastly --

14 MR. EISNER: Excuse me, Your Honor. I did join
15 in that, and I did want to be heard.

16 THE COURT: Yes, you did, you joined in it, and
17 so you ride that, and you're subjected to that unless
18 you can tell me that you had a separate meet and confer
19 with the Government on this. Did you? Did you? Yes or
20 no?

21 MR. EISNER: I did not, Your Honor.

22 THE COURT: All right. Then you counted on
23 Mr. Cephas to do that. You just simply joined his
24 motion. He didn't do what was necessary in order to
25 really bring that thing to the Court's attention. You

1 don't send something, a letter or an e-mail at
2 7:00 P.M., not get a response, and then file your motion
3 the next morning.

4 MR. EISNER: Can I clarify, Your Honor.
5 Perhaps, it's my mistake. I thought that you were
6 addressing the preclusion of evidence that was tendered
7 after the April 30th date.

8 THE COURT: That's right. The entire motion.

9 MR. EISNER: All right. I -- I -- that
10 April 30th date occurred months ago, and our motion --
11 or Mr. Cephas's motion and my joinder is to hopefully
12 respectfully call Your Honor's attention to the length
13 and the breadth of discovery that we've seen since
14 April 30th and --

15 THE COURT: Didn't I just finish telling you
16 that I think it's a good thing that the Government
17 continues to unearth documents and provide you with that
18 discovery?

19 MR. EISNER: Not if it violates the previous
20 Court's order about that discovery.

21 THE COURT: No. I think there's a bigger
22 violation when the Government fails to produce and to
23 turn over to Defense Counsel relevant, perhaps,
24 exculpatory evidence. I think that's a bigger crime
25 than worrying whether or not it violates Judge Yuen's

1 order. Okay. All right. Listen. I've ruled. Let's
2 move on. I've got a lot of things to do this morning.

3 MR. HARRIS: Your Honor, just briefly, may I be
4 heard on 1632.

5 THE COURT: Yes.

6 MR. HARRIS: I would ask the Court, in light of
7 your ruling, that this be denied without prejudice so
8 that we can do the meet and confer.

9 THE COURT: Yes, done.

10 MR. HARRIS: Thank you.

11 THE COURT: Done. Denied without prejudice.

12 All right. Let's go to the motion to suppress
13 the wiretap evidence from Target Telephone No. 9.

14 MR. WALSH: Yes, Your Honor. Joseph Walsh for
15 Jessica Medina, and I was going to reserve part of my
16 time for Mr. Cephas to argue also since he joined in it
17 and he has provided the Court with some extensive
18 briefing on the subject.

19 THE COURT: One second. This is Docket
20 No. 1590. Okay.

21 Go ahead, sir. My understanding now is that
22 the real thrust is, well, lack of necessity, and I
23 believe you also raised the argument that one of the
24 individuals named did not appear on the DOJ
25 authorization letter.

1 MR. WALSH: Yes, Your Honor. I'll submit that
2 second argument and focus just on the necessity. I
3 think that the necessity issue is the main issue on the
4 wiretap.

5 THE COURT: You understand, when I read these
6 things, then the balance of your argument is -- is
7 shaded by everything you've said, and I'm thinking to
8 myself, if you would raise that kind of frivolous
9 argument, then what's the rest of this? But go ahead.

10 MR. WALSH: Well, I didn't think it was a
11 frivolous argument, Your Honor.

12 THE COURT: Really. This is a wiretap.
13 Authorization is for what? Locations, for -- for tele
14 communications, for facilities, and your objection is
15 that this individual's name was -- it's not even your
16 client -- that this individual's name wasn't mentioned
17 and the authorization letter from the Department of
18 Justice.

19 Okay. Go ahead.

20 MR. WALSH: All right. Well, I'll proceed,
21 then, to the necessity issue because I think that's the
22 stronger argument.

23 THE COURT: Yes, it is.

24 MR. WALSH: And the main argument in the motion
25 and the basis of the argument that I think the

1 Government has overlooked in their response is that this
2 is a spin-off wiretap on Telephone No. 9 based upon an
3 earlier investigation of David Navarro in Target
4 Telephone No. 5.

5 THE COURT: Okay.

6 MR. WALSH: And to obtain a wiretap on a
7 spin-off, they have to conduct a necessity investigation
8 directed to the person who's using the spin-off
9 telephone. In this case it would have been Carlos
10 Rivera, and my client has standing in this motion
11 because, once Target Telephone No. 9 was wiretapped, my
12 client was overheard and intercepted on the telephone.

13 THE COURT: And we do have your client's signed
14 Declaration at best.

15 MR. WALSH: Yes. And necessity requires that
16 other investigative procedures have been tried and
17 failed or appear to be unlikely to succeed if tried or
18 to be too dangerous, and then the Ninth Circuit case in
19 United States vs. Gonzalez, Inc., makes two very
20 important points, and that is that each application for
21 a new phone, a spin-off phone, must have the necessity
22 requirement established as to that suspect and that
23 phone, and the Government -- and the second principle is
24 that the Government cannot transfer the necessity from
25 one application to another even -- even though this is

1 the same investigation, and in this case, the wiretap
2 application for Target Telephone No. 9, which was the
3 Carlos Rivera, has too little information to establish
4 necessity for that telephone. Essentially, what I
5 argued in my papers was that the agents conducted one
6 day of surveillance and examined three days of telephone
7 records, but in reviewing the application, it doesn't
8 even appear that the one day of surveillance was even
9 targeted towards Carlos Rivera. This was a surveillance
10 that was conducted of David Navarro, who was the person
11 on Target Telephone No. 5, and it through that one day
12 of surveillance of David Navarro that they saw a second
13 suspect, and they later identified him as Carlos Rivera.
14 So I may have conceded too much that there was a
15 necessity investigation surveilling Carlos Rivera
16 because that wasn't the purpose of the investigation.
17 He just happened to be there as a happenstance during
18 the course of their targeting David Navarro for
19 surveillance on that day, and then once they identified
20 Carlos Rivera as the person that they -- they saw
21 talking to David Navarro, then they examined three weeks
22 of toll records on his telephone, Target Telephone No.
23 9, and that's not really three weeks worth of a
24 necessity investigation. It's really an investigation
25 that took, perhaps, maybe one hour. They examined the

1 records, and they -- and they looked at who he was
2 calling and who was calling him over a three-day -- over
3 a three-week period, and that was the end of it. And
4 then from the e-mail exchange of the -- between the
5 Government Counsel and Mr. Cephas, it turns out that the
6 actual date on which the wiretap application for Target
7 Telephone No. 9 was submitted by the Government in its
8 99 percent finished form to the Department of Justice in
9 order to get the DOJ authorization that was done on
10 July 8th, which was only five days after they identified
11 Carlos Rivera from this -- from this happenstance and
12 locating him talking to David Navarro on the one day of
13 surveillance, and it was only one day after they had
14 examined his telephone records for a three-week period
15 to see who -- who was -- who Carlos Rivera was calling
16 and who was calling him. And so -- and then so that's
17 clearly insufficient based upon the case law of the
18 Ninth Circuit, and then added to that is in the
19 application, we not only have a lack of any traditional
20 investigation conducted towards Carlos Rivera, but we
21 have in one of the areas of the wiretap application
22 where they're trying to explain that further
23 investigations could not be conducted in this case
24 concerning trash searches, the agent falsely states that
25 he could not conduct a trash search of the user of

1 Target Telephone No. 9 because law enforcement doesn't
2 know his residence. Now, in the Government's response,
3 they -- they admit that that's a false statement from
4 what the affiant states this his Declaration, that he
5 failed to update it, and I pointed out in the reply that
6 a failure to update a wiretap application is the same
7 thing as saying that it was a cut and paste of a prior
8 application to put in the application for the spin-off
9 wiretap, and that's the type of conduct that was
10 criticized by the Ninth Circuit in United States vs.
11 Blackman. They said that, when you cut and paste
12 earlier wiretap applications on the issue of necessity
13 and then you incorporate them on the subsequent
14 application, it leads to the inclusion of misstatements
15 and false statements and material omissions, which is
16 what has occurred in this case.

17 And so, essentially, the cases that we're
18 relying on is United States vs. Gonzalez, Inc., and
19 that's the case of the wiretap investigation where there
20 was six months of a traditional investigation of a bus
21 company in -- in the state of Arizona, and then they got
22 a wiretap on the offices in two cities in Arizona of
23 this bus company, and during the course of this wiretap
24 investigation, they learned that there was further
25 investigation needed to be done of the owner of the

1 company who had an office in Los Angeles. And the
2 Ninth Circuit held that, just conducting a very brief
3 investigation -- let's see. I think -- the
4 Ninth Circuit said that the -- the wiretap tradition --
5 or the traditional investigation conducted at the
6 Los Angeles office consisted of collecting five days of
7 pen registers on the office, five days of trap and
8 trace. In other words, they were just analyzing who
9 this person was calling over a five-day period, and
10 there was limited surveillance. The Court wasn't clear
11 as to how many days, but the impression was it was one
12 or two days of surveillance of the Los Angeles office,
13 and then there was a preliminary discussion of whether
14 there was a possibility of introducing an undercover
15 agent, which they decided not to do, and the
16 Ninth Circuit clearly held that, as a matter of law on
17 those facts, that this was an insufficient traditional
18 investigation, and so necessity was not shown as a
19 matter of law to allow for the wiretap on the offices in
20 Los Angeles, and I think this case falls clearly within
21 Gonzalez, and it also falls clearly within the holding
22 of United States vs. Carneiro, and in the Carneiro case,
23 it was a similar situation involving a drug conspiracy,
24 and the original investigation was towards a suspect by
25 the name of McNeil, and before obtaining a wiretap on

1 McNeil, they conducted their normal traditional
2 investigation of McNeil. They obtained the wiretap, and
3 then during the course of listening into the wiretap of
4 Mr. McNeil, they overheard two additional suspects,
5 Mr. Hardy and Mr. Boyd, but did not conduct further
6 traditional investigations of Hardy and Boyd before
7 obtaining a wiretap order for -- for those two
8 individuals, and the Ninth Circuit held that the
9 wiretaps on Hardy and Boyd, that the spin-off wiretap
10 applications were in violation of Title 3 because there
11 was in traditional investigation conducted of Hardy and
12 Boyd, and the Court held there must be a showing of
13 necessity with respect to each telephone and
14 conspirator, and there wasn't. That wasn't done in
15 Carneiro, and the Ninth Circuit suppressed the evidence,
16 and I think what these cases basically show or hold is
17 that they have ordered suppression of wiretap evidence
18 in cases of spin-off wiretaps where the Government fails
19 traditional investigation of the person using the
20 spin-off telephone, and I think, under the facts of this
21 case, we not only have the insufficiency of the agents
22 doing -- doing nothing more, once identifying Carlos
23 Rivera, other than reviewing three weeks of his
24 telephone records, and -- and then immediately
25 thereafter, one day later, applying for a wiretap. And

1 in the course of applying for that wiretap, they make
2 this false representation within the necessity
3 application concerning trash searches where they falsely
4 represent, well, we can't do a trash search of the user
5 of Target Telephone No. 9 because we don't know his --
6 his address. And, in fact, the --

7 THE COURT: I have a question. Tell me about
8 the trash search. Do you have any estimate of how
9 valuable a trash search would be in this type of case?

10 MR. WALSH: Well, every case is different.

11 THE COURT: This kind of case.

12 MR. WALSH: Well, sometimes you're able to
13 locate co-conspirators, you're able to locate drug
14 pay-and-owes that have been discarded, you're able to
15 locate packing material from drugs when the drugs are
16 taken out of the packing material and thrown out.
17 There's a possibility of locating the names and
18 addresses of co-conspirators that may have been on -- on
19 notation papers and thrown into the trash, but that --
20 but the point of our argument is that the wiretap
21 application in good faith has to truthfully set forth
22 the reasons in the -- in the four corners of the
23 application as to why trash searches would not be useful
24 in this particular case, and they didn't do that here.
25 What they did was they give a paragraph that was

1 completely false as to the reason they can't conduct a
2 trash search, and the inclusion of that false statement,
3 I think, taints -- taints the warrant and puts it on a
4 different class of case than merely reviewing the
5 decision to grant or deny a wiretap under an abuse of
6 discretion standard. When you have the inclusion of a
7 false statement, then the -- the Court has to basically
8 use de novo review and grant the motion to suppress if
9 it's possible that the motion would have been denied by
10 the -- by the magistrate if the -- if the false
11 statement didn't appear in the -- in the warrant
12 application, but we're not relying entirely on that.
13 We're relying mainly on the language in United States
14 vs. Gonzalez, Inc., where they -- they reviewed five
15 days of trap and trace, a couple of days of
16 surveillance, and merely discussing the possibility of
17 having an undercover agent as being insufficient
18 traditional investigation as a matter of law, and I
19 think that the amount of traditional investigation
20 concerning Target Telephone No. 9 and Carlos Rivera in
21 this case is even less than in the Gonzalez, Inc. case
22 and would require the Court to grant the motion to
23 suppress the evidence.

24 THE COURT: Okay. All right. Thank you,
25 Counsel.

1 MR. WALSH: And I think Mr. Cephas wanted to
2 make a brief argument.

3 THE COURT: Mr. Cephas, quickly please.

4 MR. CEPHAS: Thank you, Your Honor. First,
5 with respect to the DOJ authorization, although the
6 Court has indicated it's a frivolous argument, I don't
7 believe it is, and the reason I don't believe it is is
8 because 18, U.S.C., 25-18-1 says that each application
9 for an order authorizing or approving the interception
10 of a wire shall -- shall include the following
11 information: The identity the person if known
12 committing the offense and who's communications are to
13 be intercepted. Here, they --

14 THE COURT: Which application? We're not
15 talking about the application. We're talking about the
16 DOJ authorization letter.

17 MR. CEPHAS: That is right, Your Honor. And
18 the cases and interpreting it have all concluded that
19 the DOJ authorization letter is part of the application,
20 and cases have also said that, if the DOJ did not
21 authorize an individual, then the application fails.
22 This is a case where the evidence suggests the DOJ had
23 no notice. The Government has had an opportunity to
24 prove, otherwise, that the Government -- that the DOJ
25 had notice. There is none. Nothing was presented to

1 the reviewing judge showing that DOJ was ever told that
2 they knew the phone was going to be used -- was used by
3 Carlos Rivera; therefore, the application should never
4 have been authorized with respect to Rivera.

5 Moving on to the necessity, 25-18,
6 Subsection C, states that, in order to show necessity,
7 there has to be a full and complete statement as to
8 whether or not investigative procedures have been tried
9 and failed or why they reasonably appear to be unlikely
10 to succeed if tried or to be too dangerous. The
11 Government cited those three prongs in their opposition;
12 one, have been tried and failed; two, reasonable
13 appeared to be unlikely to succeed if tried; or, three,
14 were too dangerous to attempt, and they cited Gonzalez
15 for that. Nowhere in the application do they say it's
16 too dangerous. Nowhere in the application do they
17 demonstrate that they tried and failed, and nowhere in
18 the affidavit or application have they pointed out that
19 these traditional methods would be reasonably unlikely
20 to succeed if tried. All that the agents said over and
21 over again is, well, we've had some success at this.
22 We've had some success at that. We've had some success
23 at the other things, but it would be so much better if
24 we had a wiretap. So what they were doing was,
25 actually, successful, but they were given a wiretap

1 based on the claim that it would be even better if we
2 had a wiretap. Well, that goes without saying in any
3 case. Their -- their affidavit -- and even their
4 opposition fails to demonstrate any of those three
5 prongs, and for that reason, the wiretap should have
6 never been granted and it should be suppressed.

7 Thank you, Your Honor.

8 THE COURT: Thank you, sir.

9 Ms. El-Amamy.

10 MS. EL-AMAMY: Yes, Your Honor, starting first
11 with necessity, I think the Defendants' argument needs
12 to be examined first from a factual basis. What they
13 would like the Court to believe is the Government's
14 investigation of Carlos Rivera began on a date that he
15 was identified. However, in the affidavit, at
16 USA 000593, at least by May 16th, 2009, although Carlos
17 Rivera was not identified, he was identified as a person
18 who was relevant to the investigation. The first of his
19 calls listed in the affidavit was May 16th, 2009, then
20 May 26th 2009, June 26th, 2009, and then a call on
21 July 8th, 2009. Prior to July 3rd, 2009, he was not
22 identified by the affiant. However, the affidavit lists
23 surveillances that took place on June 23rd, 2009,
24 targeting the gang; June 24th, 2009, targeting the gang;
25 and again June 25th, 2009, targeting the gang. The

1 prior affidavit, which is incorporates by reference at
2 USA 000450, also lists a surveillance on May 24th, 2009,
3 which targets the gang. So it's not accurate to say
4 that we just learned of Carlos Rivera on July 3rd, 2009,
5 and submitted his affidavit to the -- to DOJ. That's
6 not what happened in this case, and that's what the
7 Defendants are basing their argument on.

8 Now, even with all these instances of
9 surveillance, law enforcement were not able to identify
10 Carlos Rivera until July 3rd, 2009. What the Defendants
11 are arguing is that somehow there was some investigative
12 technique, and they've conceded that there were no
13 confidential sources, there were no witnesses who were
14 prepared to testify before the Grand Jury. They failed
15 to acknowledge that the Government did conduct a check
16 to see if there were any jail calls to Target
17 Telephone 9 prior to submitting the affidavit. That
18 didn't assist in the investigation. Surveillance
19 activities, while, perhaps, after he was identified,
20 would have tracked this Defendant, it does not indicate
21 how it would identify his co-conspirators, including
22 Defendant Medina and Defendant Prieto, who were not
23 identified as being co-conspirators until after the
24 phone was being intercepted.

25 What they're claiming is that in this case a

1 trash search, a pen register, and GPS and a parole
2 search would have been useful in assisting in the
3 investigation. In this affidavit, as well as in the
4 previous affidavits which are incorporated by reference,
5 the affiant set out a trash search would not be
6 useful -- would likely not be useful to the
7 investigation. That's in the four corners of the
8 affidavit. A parole search at some unidentified time
9 who, perhaps, Carlos Rivera, would have had materials at
10 his home. Perhaps, he wouldn't at that date and time.
11 It, certainly, wouldn't help law enforcement officers
12 identify his source of supply or Defendant Medina
13 Defendant Prieto's role in the conspiracy.

14 GPS, again, would be useful, perhaps, in
15 assisting law enforcement officers to learn about where
16 Carlos Rivera was located at a particular time.
17 However, we wouldn't be able to know what he was doing
18 at a particular time, whether or not that meeting was
19 useful to send law enforcement resources there; and,
20 again, law enforcement officers would not be able to
21 learn about the co-conspirators' role including
22 defendant Medina and Defendant Rivera.

23 Now, the Defendants argue, too, that the
24 Government's made no showing that it was too dangerous
25 to employ law enforcement resources. However, the very

1 nature of the calls that are listed in the affidavit
2 display on its face why it's dangerous to conduct law
3 enforcement activities. For example, in one call, this
4 Defendant and his co-conspirator are discussing getting
5 a gun. In another call, they're discussing in quotes
6 "fucking with law enforcement," who is behind Carlos
7 Rivera. In another call, Carlos Rivera is talking about
8 getting at an individual, a female individual who owes
9 money to a co-conspirator. The very nature of the
10 Government's affidavit demonstrates dangerousness.

11 It's also just simply not true --
12 Defendant Prieto has argued that the Government
13 somehow -- the Department of Justice was not aware that
14 Carlos Rivera was the user of the phone. The
15 application, affidavit, and proposed order were all
16 submitted to the Department of Justice. All those
17 clearly state that Defendant Carlos Rivera was a primary
18 user of the telephone. It just makes no sense that now
19 the Department of Justice wouldn't be aware of who the
20 primary user of the telephone is.

21 This is not a spin-off wiretap application.
22 The Defendants would like to tie this to Blackman, which
23 was essentially related to a different investigation,
24 and the Government took great lengths in its opposition
25 to distinguish Blackman from this under case.

1 Although the Defendants throw out various
2 investigative techniques, none of them and the
3 Government submits it isn't aware either how those
4 investigative techniques would have furthered the goals
5 of the investigation, which is not just targeted to
6 Carlos Rivera as the Defendants would like the Court to
7 believe but was targeted to him and members of his
8 conspiracy.

9 THE COURT: I know. I -- actually, I think
10 Blackman probably helps you for reasons that are
11 irrelevant. I'm familiar with the Jordon Downs Housing
12 Project. I cannot imagine police conducting some sort
13 of covert investigation in there. I think a great deal
14 of deference or at least some deference needs to be
15 accorded to law enforcement when they make an assessment
16 as to what will or will not probably work or what will
17 or will not probably be very dangerous.

18 Yes, Mr. Cephas.

19 MR. CEPHAS: Your Honor, there has to be some
20 deference to law enforcement when they say something,
21 but they didn't say anything here. They didn't say
22 surveillance wouldn't work. In fact, as I pointed out,
23 they surveilled Navarro, and that's how they found out
24 who Rivera was by surveilling Navarro. Ms. El-Amamy
25 claimed surveillance wouldn't have done anything. Well,

1 if they had surveilled Rivera, he would have -- he would
2 have shown them Mr. Prieto because he goes to Prieto's
3 house a lot, and they know that, and so surveillance
4 would have worked. Surveillance of Mr. Rivera would
5 have revealed his girlfriend, Jessica Medina, because
6 she's his girlfriend. So to say that surveillance
7 wouldn't have led to co-conspirators is just flat wrong
8 and disproven by the evidence, and it's another one of
9 the conclusory statements that has no case-specific
10 facts.

11 THE COURT: All right. Mr. Cephas, I'm going
12 to -- what I'm going to do is go back and read it again
13 based on your representation that it's just not there.
14 Okay.

15 MR. WALSH: Your Honor.

16 THE COURT: Even considering the fact that some
17 of your earlier representations to the Court have not
18 been totally accurate.

19 MR. CEPHAS: Well, Your Honor --

20 THE COURT: Why don't you just sit down.

21 Yes, sir.

22 MR. WALSH: May I make a brief response? Much
23 of the references that the Government was making to the
24 wiretap applications strike me as gathering information
25 on the issue of probable cause, and I think the Court

1 has to make a distinction between the necessity
2 investigation and investigation developing probable
3 cause because you can gather a lot of probable cause in
4 listening to the earlier wiretap Target Telephone No. 5,
5 and you can hear Mr. Rivera calling and making
6 conversations, drug-related conversations over the
7 telephone, but that's not a necessity investigation.

8 THE COURT: I understand that, and I want to
9 take a look at -- at the affidavit with an eye towards
10 whether or not it's established all of those prongs that
11 are required. So I want to take a look at that. Okay.

12 MR. WALSH: And you're focusing only on the
13 necessity.

14 THE COURT: On necessity only. Okay. All
15 right.

16 You're on your feet.

17 MR. CEPHAS: Your Honor, I thought we were done
18 with this --

19 THE COURT: We are.

20 MR. CEPHAS: -- and I wanted to raise a
21 separate issue.

22 THE COURT: Okay. We are done.

23 MR. CEPHAS: Thank you. The issue is related
24 to expert witnesses, and it -- it's sort of part of what
25 was addressed in the motion to preclude, but it was --

1 it was raised anew by the status conference report that
2 we received yesterday, and then last night, I received
3 expert notice of a new government expert.

4 THE COURT: Okay. What's -- what's your
5 concern because you have to understand that this is
6 inevitable? If you make someone disclose your witnesses
7 a year in advance, there's going to be changes. You
8 understand that?

9 MR. CEPHAS: I understand that, Your Honor, and
10 I also understand that, when you give me an order or the
11 Court gives me an order, I'm going to assume I have to
12 follow it.

13 THE COURT: I read all of that. Don't do it
14 again. Okay.

15 MR. CEPHAS: Well, Your Honor --

16 THE COURT: You're going to do it, aren't you?

17 MR. CEPHAS: No, I'm not. I'm not.

18 THE COURT: I read your papers.

19 MR. CEPHAS: Okay. What I'm going to address
20 is what happened last night, an exchange last night
21 where -- and what you didn't read in my papers hasn't
22 been presented because I didn't know they were going
23 to -- they were going to present an expert witness in
24 their status conference report and then in the notice
25 last night. Two weeks ago, we got an e-mail saying

1 that, because they're past the expert deadline
2 destination, they were going to move ex parte to seek
3 the Court's permission to designate an expert. I then
4 sent an e-mail back saying that I didn't believe an
5 ex parte was justified. Please do it by noticed motion.
6 I got no response. Then the status conference report
7 yesterday was filed saying we intend to designate
8 another expert.

9 THE COURT: Is this the gang expert?

10 MR. CEPHAS: No this is a drug expert.

11 THE COURT: Drug expert. Okay.

12 MR. CEPHAS: And the problem that happened with
13 the gang expert is the gang expert was designated on
14 time, February 9th, I believe was the date, but there
15 was no meat to it. There were no opinions. There's
16 were no bases for the opinions. There were none of the
17 facts that were required. And over the next four
18 months, we spent thousands and thousands of dollars of
19 CJA money trying to get the Government to flesh out
20 information on -- on the expert, to try to get the
21 opinions, we never did, and then finally on June 15th,
22 the Government said never mind. So yesterday, we got an
23 expert designation, same thing, even though we have been
24 through all this before, it's got no -- it's got no
25 opinions. It just lists topics. It's not an expert

1 designation. We're now going to have to go through the
2 same fight and spend thousands more dollars of CJA money
3 because they didn't designate an expert on time, a drug
4 expert who works for the Government who could have been
5 designated at any time, and instead now we're going to
6 have to start this fight all over again. And it should
7 have been done by noticed motion so that we could have
8 responded to it, and instead the Government sends me an
9 e-mail last night saying, well, if you intend to
10 challenge this, let me know if you're going to do it by
11 ex parte or noticed motion because they don't have to
12 file the Court's -- follow the Court's rules apparently,
13 and I do, and I don't think it's appropriate. I think
14 that they should not be allowed to designate a drug
15 expert at this time and, especially, in light of the way
16 they failed to designate properly months ago, costing us
17 thousands of dollars unnecessarily.

18 THE COURT: What are you asking for?

19 MR. CEPHAS: Well, my --

20 THE COURT: Since we're talking about following
21 the rules, what are you asking for because I don't have
22 any paper in front of me?

23 MR. CEPHAS: Well, you have the Government's
24 status report --

25 THE COURT: Yes, I do.

1 MR. CEPHAS: -- which indicates that they are
2 going to designate an expert. I would like the Court to
3 rule that they cannot designate any more experts.
4 There's no basis for a designation at this point. It
5 was the relief that I requested in the motion that you
6 earlier denied, but you denied it on -- because you
7 think getting more is better. Well, I agree getting
8 more is better, too, but I have a history in this
9 district that Prosecutors always give us more on the eve
10 of trial and not because it's better but because it's
11 better for them to wait until the last minute, and I
12 understand that. I would like to wait until the last
13 minute and sandbag them if I had the ability to do that
14 as well, but it's not fair. The order was set. There
15 was no basis and to slip it in the back door through a
16 status conference report and then put the burden on the
17 Defendants to enforce a prior order is unfair.

18 THE COURT: All right. I'm -- I'm curious. I
19 understand a replacement expert but a drug expert?

20 MS. EL-AMAMY: Correct. Well, this isn't --
21 this isn't a replacement expert.

22 THE COURT: Right. That's what troubles me.

23 MS. EL-AMAMY: Right. What happened was the
24 way this case was -- the Defendants were interested in
25 knowing what the gang expert was going to be so that

1 they could challenge whatever opinions he or she may
2 offer. The Government had no idea a year in advance of
3 trial whether or not it was going to call a gang expert.
4 However, setting the expert notice deadline was set so
5 far that that could be litigated. The Government sent
6 out an expert notice at the deadline because it was
7 forced to make a decision at that time.

8 THE COURT: Uh-huh.

9 MS. EL-AMAMY: It realized because it
10 investigated it more after the deadline had passed, but
11 because the deadline was so early that it really wasn't
12 going to be helpful to the case, that everybody wasted a
13 bunch of time designating an expert that it wasn't going
14 to call and then people investigating it and then not
15 calling the expert.

16 The narcotics expert is just a basic narcotics
17 expert that is called in any type of drug non-complex
18 trial.

19 THE COURT: Uh-huh.

20 MS. EL-AMAMY: It doesn't replace anybody, and
21 it is -- and it is a late disclosure if that is
22 troubling to the Court.

23 THE COURT: Well, and that's what's troubling
24 to Mr. Cephas.

25 MS. EL-AMAMY: Right.

1 THE COURT: And in this particular case --
2 well, I would imagine everyone knew that a drug expert
3 was going to be called, but I guess Mr. Cephas's point
4 is he didn't know what this expert's going to testify to
5 and I don't know the nature of his expertise. I don't
6 know if he's a chemist or not.

7 MS. EL-AMAMY: He's -- he's.

8 THE COURT: Is he going to talk about street
9 sales and that sort of thing?

10 MS. EL-AMAMY: He's not, Your Honor. Mr. Dore,
11 actually, drafted the expert notice, which was very
12 lengthy.

13 MR. DORE: May I address that briefly,
14 Your Honor?

15 THE COURT: Yes.

16 MR. DORE: Your Honor, I can give the Court a
17 copy.

18 THE COURT: Please. If we're not going to
19 follow the rules, let's not really follow them.

20 (Brief interruption.)

21 THE COURT: Okay.

22 MR. DORE: Your Honor, that expert notice you
23 have was provided by the Government to Defense Counsel
24 last night. It was two experts, one of which is DEA
25 Special Agent (Phonetic) Steve Harris, and the other,

1 which is a Spanish linguist specialist, (Phonetic)
2 Mr. Jesus Dimas. The form of the notice was modeled off
3 of a notice provided to Defense Counsel in a separate
4 case, which was upheld by Judge Feess in an order in a
5 case, United States vs. Albero Vargas, CR 11-50. I have
6 copies of that case if Your Honor -- that order, rather,
7 if Your Honor would be interested in seeing it. In that
8 order -- may I approach, Your Honor?

9 THE COURT: No, I don't need that. I don't
10 need that. I've looked at what you've submitted. I've
11 never seen this format before, but I was looking at the
12 content, and I'll find out in a moment why Mr. Cephas --
13 in fact, let's find out now.

14 What is your complaint with respect to this
15 when he gives you the categories that this expert
16 intends to testify regarding the --

17 MR. CEPHAS: Your Honor, my complaint is
18 Rule 16 doesn't require the Government disclosure to
19 show categories and topics. It requires the Government
20 disclosure to identify opinions. And there are no
21 opinions in here. For example, it claims that he's
22 going to take about the use of code words. Well, I can
23 also cite to several judges in this district who have
24 issued orders saying that the agent has to identify the
25 code words and his opinion as to what those code words

1 are. And if the expert is going to get on the stand and
2 say this is what that word means, that's an opinion.

3 THE COURT: Uh-huh.

4 MR. CEPHAS: And I need that opinion. I might
5 agree with it; I might disagree with it.

6 THE COURT: Okay.

7 MR. CEPHAS: I might need an expert -- a
8 rebuttal expert to say he's dead wrong, and -- and we
9 don't get that.

10 THE COURT: Okay. No. No, that's fine.

11 MR. CEPHAS: Well --

12 THE COURT: Anything else?

13 MR. CEPHAS: Well, throughout the entire
14 designation, that's all we get is topics. These are the
15 topics that he's going to testify to, and I agree --

16 THE COURT: Okay. Here's what I want you to
17 do. Not that this is a noticed motion that we're
18 dealing with, but what I would like you to do and since
19 everyone's here maybe this would be productive. I would
20 like you to, without a lot of hyperbole and chest
21 thumping, just please send a short and concise request
22 to Mr. Dore and tell him just what you just said now
23 with respect to the opinions that you would like.

24 And then, Mr. Dore, I would then like you to
25 respond and tell him that that's what -- I don't know.

1 Mechalina, what it really means is half a pound of meth.
2 All right. Just can you do that? Do you understand
3 what I'm saying?

4 MR. DORE: I understand what you're saying.
5 The only question I have is in regards to time. We,
6 certainly, have different Defendants who are in or going
7 to be out of the case. At this point, the Government is
8 marshalling its resources to determine exactly what
9 exhibits would be used, what transcripts would be used,
10 and for us to specify exactly -- exact interpretations
11 as to exact terms, in effect, is a determination of what
12 exhibits would be used at trial.

13 THE COURT: True.

14 MR. DORE: And so rather than simply having an
15 over-inclusive list would be construed as a dump on
16 Defense Counsel because that, in fact, was not
17 inherently used at trial, the Government would need time
18 to determine that level of specificity if it was
19 required by the Court. Now, certainly, the Government
20 doesn't oppose providing that to Defense Counsel to the
21 extent the Court thinks it's necessary and warranted,
22 but to do it in the immediate term, at this point, would
23 simply just not be that practical.

24 THE COURT: I don't -- I don't think Mr. Cephas
25 is asking for it right now. He just needs it in advance

1 of trial.

2 Now, Mr. Cephas, do you need this in order to
3 make a determination as to whether or not you're going
4 to hire your own expert to say that, no, that is not
5 what this word means in that context?

6 MR. CEPHAS: Correct.

7 THE COURT: Why don't you go ahead and hire
8 your expert.

9 MR. CEPHAS: Well, Your Honor, I will seek CJA
10 authorization to do it.

11 THE COURT: Okay.

12 MR. CEPHAS: But also I need to know what their
13 opinions are so that I may challenge some of the
14 designation as being non-expert testimony.

15 THE COURT: You're there. All right. We're
16 talking about timing now. That's what I'm talking
17 about, is get your expert on board, and my question to
18 you is how far in advance of trial do you think you need
19 this information to give to your expert?

20 MR. CEPHAS: Well --

21 THE COURT: Actually, I know the answer to
22 that. You sit down at Starbucks with your expert and
23 give him a list, and he says yes, yes, yes, no, no, no;
24 right? I mean, if he's an expert, if he knows what
25 these words mean, he can tell you immediately, can't he?

1 MR. CEPHAS: Yes.

2 THE COURT: Shouldn't he?

3 MR. CEPHAS: Yes. I -- I expect he could.

4 THE COURT: All right. So give me a date.

5 MR. CEPHAS: Excuse me?

6 THE COURT: Give me a date by which you would
7 like to have this information from the Government.

8 MR. CEPHAS: September 24th.

9 THE COURT: The trial's November 6th?

10 MR. CEPHAS: Correct, your Honor. Okay. I
11 gave you a shot at it. Now I'll take my own shot.

12 Give me a date in mid to late October. Any
13 date. Okay. 17th of October.

14 MR. CEPHAS: Okay.

15 THE COURT: Mr. Dore, 17th of October.

16 MR. DORE: Yes, Your Honor.

17 MR. CEPHAS: The problem with that, Your Honor.
18 It doesn't provide adequate notice to bring a noticed
19 motion to challenge the expert information, and that --
20 that was the point I was trying to make, that I need to
21 file a noticed motion challenging information in the
22 expert designation, and now I'm going to have to do it
23 by ex parte, which is not -- is not appropriate for
24 that.

25 THE COURT: Look what you've done today.

1 MR. CEPHAS: Well, what I've done today --

2 THE COURT: What you've done today is stand up
3 and make an oral motion.

4 MR. CEPHAS: I've made an oral motion --

5 THE COURT: Okay. You've gotten what you're
6 going to get, Mr. Cephas.

7 MR. CEPHAS: Thank you, Your Honor.

8 THE COURT: All right. Anybody have anything?

9 MR. EISNER: Yes, Your Honor. I just wanted to
10 bring up one of Mr. Cephas's comments regarding that
11 gang expert, and I realize Your Honor discussed the
12 admission of that gang expert. We were talking about
13 foundation.

14 THE COURT: Wait a minute.

15 MR. EISNER: I'm sorry. The drug expert, but I
16 do want to call Your Honor's attention to the fact that
17 what -- what brought us here is Mr. Cephas's motion to
18 preclude the Government from bringing in witnesses late,
19 and that, Your Honor, was it stems from Judge Yuen's
20 order of October 13th, and in in her order, she says
21 that by January 23rd, 2012; and, again, last night on
22 the 10th of November is when we got this narcotics
23 expert, but Judge Yuen's order back in October of '11
24 says that by January 23rd, the Government shall disclose
25 all experts. That wasn't the first cut-off date,

1 Your Honor. Previous to that -- and that date was only
2 given on condition of the Defendants' speedy trial
3 waiver. We continued the case about eight months in
4 order to have those dates to be placed, but the initial
5 date for expert witness disclosure was October 24th of
6 2011, and that was in an earlier motion to continue the
7 trial. I don't want to belabor the point, Your Honor.

8 THE COURT: But you are. What -- what are you
9 asking?

10 MR. EISNER: Well, I'm -- I'm just reiterating
11 my objection to the Government being allowed to disclose
12 at this late date additional experts. We have two new
13 experts as of the last two weeks, one is a language
14 expert and one is a narcotics expert.

15 THE COURT: Okay.

16 MR. EISNER: And -- and I just wanted to
17 reiterate my objection to that and just call
18 Your Honor's attention to the previous due dates that
19 had come and gone prior to what's being heard today.
20 Thank you.

21 THE COURT: All right. Thank you.

22 MR. DORE: Your Honor, may I just note one
23 thing for the record? There is Ninth Circuit authority
24 for expert disclosures happening within twelve days of
25 trial, and so we believe two months is not an

1 exceedingly late date, particularly, given that
2 Agent Steve Harris was noticed in that Judge Feess case
3 I referenced earlier in which two Defense Counsel in
4 this case were, actually, Defense Counsel. So they had
5 an opportunity to -- at least some of the Defense
6 Counsel had an opportunity to hear him in that case, but
7 just as a more general matter, obviously, we know that
8 two months is not an exceedingly long period. That
9 said, the operative -- the date in Judge Yuen's order
10 did say February 29th, 2012, to disclose expert
11 testimony or expert witnesses. We believe that that is
12 too early a date given that it's nine months ahead, and
13 we don't know the shape of the case then when it had
14 over 49 Defendants versus now when it's down to ten.
15 And, thus, at this point, it might expedite things and
16 save time if we resolve with the Court whether or not
17 there's another date that would be appropriate, whether
18 the date is today or some date in the past, whereby, the
19 Government can disclose the expert witnesses including
20 the two last night.

21 THE COURT: I don't like -- I really don't like
22 this -- this practice or policy of making disclosures
23 eight, nine months in advance, except in this case with
24 respect to gangs and drugs. I think everyone in the
25 room anticipated that there would be a gang expert and a

1 drug expert. So neither of those, I think, would come
2 as a surprise to anyone. However, Mr. Cephas raises a
3 point. Even though you have provided -- even at this
4 date you have provided categories that this expert is
5 testifying regarding there are no opinions. So with
6 respect to interpretation of some of the words that were
7 picked up on these telephone conversations, let's get a
8 glossary together and provide it -- is it
9 October 17th? -- to Defense Counsel.

10 Now, with respect to any additional experts,
11 other than having to replace an expert who is now
12 unavailable, does the Government seriously anticipate
13 identifying any additional experts?

14 MS. EL-AMAMY: Not to its knowledge.

15 THE COURT: Okay. Mr. Dore, you were going to
16 exercise caution?

17 MR. DORE: Yes, Your Honor. If anyone came to
18 mind immediately, we would have done it, but the fact of
19 the matter is now that we are basically on the eve of
20 trial and two-month period where we basically know where
21 we're going, the Government will be putting its exhibits
22 together, and it's finalizing its witness list. We do
23 not expect there to be any additional experts, but it is
24 conceivable in finalizing that list and determine
25 exactly what terms, for example, Agent Harris can

1 interpret that there would be another one that would be
2 necessary. We, certainly, don't expect to do it. We
3 have no desire to drop any witnesses on the Defense at
4 the last minute, who, obviously, themselves do not
5 apparently have a deadline to disclose their own experts
6 in response. To this is not meant to be an exercise for
7 the Court by any means. It was simply to set out so
8 that we're all on the same page if something does come
9 up and the Government does provide notice of that, but
10 we are not looking to do that or planning to.

11 THE COURT: Sure. All right. The 28th of this
12 month, but extraordinary good cause would have to be
13 shown. All right. That's to add any additional
14 experts. It's not going to replace. If you replace an
15 already designated expert, that's a different thing and
16 then provide Mr. -- not just Mr. Cephas but all Defense
17 Counsel by August 17th with a list of the opinions that
18 your gang expert is going to offer.

19 All right. We are adjourned.

20 MR. BAKMAN: Your Honor, I had one other
21 matter. Your Honor, briefly. Since you've indicated
22 that there was a severance and we have two groupings, I
23 would be in the second grouping with Mr. Vega, do we
24 have any idea as to when to expect the trial date?

25 THE COURT: No.

1 MR. BAKMAN: All right. So I can rely upon the
2 fact that I would not be present November 5th for trial
3 in this matter; is that correct, Your Honor?

4 THE COURT: Maybe we ought to use the 17th as
5 also a final pretrial conference, an all-hands final
6 pretrial conference, and at that time, we need to
7 discuss this, really finalize it so that everyone knows,
8 and then we'll also set a date for the second trial.

9 MR. BAKMAN: All right. And the reason I ask,
10 Your Honor, clearly, I start trial with Judge Real in
11 about a week and a half. I would not be able to prepare
12 this by November 5th. So I really want to make sure I
13 don't have to go to trial November 5th.

14 THE COURT: Well, remember. The November date
15 was set by Defense Counsel; remember?

16 MR. BAKMAN: I -- I understand, and if I have
17 to go on the 5th, I'll do -- you know as well as I do
18 what I need to do to be ready on November 5th, but I
19 would prefer to know now that I don't have to go there
20 at this point in time in terms of trial prep, final
21 trial prep.

22 THE COURT: Right now, right this minute, I
23 intend to adopt the only written proposal I have with
24 respect to the grouping; and, coincidentally, I get that
25 proposal from, perhaps, the one who would know best, the

1 Government who is the one who is going to be putting on
2 this evidence.

3 Once, again, your client?

4 MR. BAKMAN: Steven Vega, Your Honor.

5 THE COURT: Vega. As it stands right now, Vega
6 would be in the second group; yes, sir.

7 MR. PEREZ: Your Honor, I'm on the first group
8 with Salvador Martinez.

9 THE COURT: All right.

10 MR. PEREZ: I also want to add that that group
11 should be broken down into two groups, and the reason
12 is, Your Honor, as far as my client is concerned,
13 No. 45 --

14 THE COURT: Uh-huh.

15 MR. PEREZ: -- Salvador Martinez, he is not
16 charged in the RICO conspiracy. He is not charged in
17 the RICO crime.

18 THE COURT: Uh-huh.

19 MR. PEREZ: He's merely in the charge drug
20 conspiracy.

21 THE COURT: Uh-huh. Listen. Everyone of you,
22 as I suppose, is in a different position and everyone
23 can stand and voice an opinion. That is why a month ago
24 I asked you to get together. Okay. It would have been
25 nice if I could have ad just a postcard-sized submission

1 from each of you saying this is why this grouping makes
2 sense, okay, in terms of evidence. I do not know the
3 specific acts that each of your respective clients are
4 going to have to defend against. In terms of someone in
5 the room who is capable of, actually, making an
6 intelligent decision regarding grouping, I am the last
7 person on the list. I needed input from all of you. I
8 got input from Ms. El-Amamy.

9 MR. PEREZ: Yes, that's the only reason I spoke
10 up because in her input she omitted to mention that my
11 client was not charged in the RICO conspiracy or the
12 RICO crimes, Your Honor.

13 THE COURT: That would have been good to read.
14 People are handing me things this morning. I got
15 submissions this morning. Okay. It's nice to get these
16 things in writing.

17 Okay. Anyway, we are --

18 MR. CEPHAS: I have some housekeeping issues.
19 With respect to the Declaration or the motion to
20 suppress, I submitted an electronic signature. The
21 Government didn't object to it. I have -- I have signed
22 versions if the Court wants --

23 THE COURT: No, I took it at your word. I
24 didn't think you were --

25 MR. CEPHAS: Well, I just wanted to make sure

1 because the Court had said something at the last hearing
2 that made me unclear as to whether you would permit the
3 electronic signature.

4 THE COURT: No, Mr. Cephas, we wouldn't have
5 entertained your argument if it hadn't been established
6 that your client had standing.

7 MR. CEPHAS: Thank you.

8 THE COURT: All right. We're done. We are
9 done.

10 (Proceedings concluded at 11:31 A.M.)

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C E R T I F I C A T E

I hereby certify that, pursuant to Title 28, Section 753, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Certified on June 6, 2013.

/s/ Katherine M. Stride
KATHERINE M. STRIDE, CSR, RPR
Official Court Reporter
License No. 11773

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE OTIS D. WRIGHT
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

United States of America,)	
PLAINTIFF,)	
)	
VS.)	NO. CR 10-351 ODW ODW
)	
Jessica Medina,)	
DEFENDANT,)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, APRIL 8, 2013

KATIE E. THIBODEAUX, CSR 9858
U.S. Official Court Reporter
312 North Spring Street, #436
Los Angeles, California 90012

1 APPEARANCES OF COUNSEL:

2

3 FOR PLAINTIFF:

4 U.S. DEPARTMENT OF JUSTICE
5 U.S. ATTORNEY'S OFFICE
6 BY: REEMA EL-AMAMY, AUSA
-and- MICHAEL DORE, AUSA
7 312 North Spring Street
Twelfth Floor
Los Angeles, CA 90012

8

9 FOR DEFENDANT MEDINA:

10 JOSEPH F. WALSH LAW OFFICES
11 BY: JOSEPH F. WALSH
205 South Broadway
Suite 606
12 Los Angeles, CA 90012

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1 LOS ANGELES, CALIFORNIA; MONDAY, APRIL 8, 2013

2 10:06 A.M.

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5
6 THE CLERK: Calling Item 1, CR 10-351, United
7 States of America versus Jessica Medina.

8 Counsel, may I have your appearances, please.

9 MS. EL-AMAMY: Morning, your Honor. Reema
10 El-Amamy and Michael Dore on behalf of the United States.

11 THE COURT: Counsel, good morning.

12 MR. WALSH: Joseph Walsh appearing with Jessica
13 Medina who is present.

14 THE COURT: Mr. Walsh, Ms. Medina.

15 MR. WALSH: And I apologize about the late
16 letters, your Honor. They were just delivered to me this
17 morning. I know that court procedure requires they be
18 electronically filed two weeks before the sentencing, but
19 I felt obligated, I had to submit them to the court.

20 THE COURT: Okay. Thank you.

21 All right. Well, we are here for sentencing
22 in this matter. Now, you can both stand there if you
23 wish, or you can be seated and make yourselves
24 comfortable.

25 All right. On December the 12th of last year,

1 2012, Ms. Medina was found guilty following a jury trial
2 on Counts 1, 25 and 10 of the, I believe it is a 30-count
3 indictment.

4 Count 1 charges a violation of Title 18,
5 United States Code, Section 1962(d), as in David, RICO
6 conspiracy. Count 2 charges a violation of Title 18,
7 United States Code, Section 1962(c). This is the
8 substantive RICO offense. Count 5 charges a violation of
9 Title 21, United States Code, Section 846, conspiracy to
10 distribute and possession with intent to distribute
11 methamphetamine and heroin. Count 10 charges a violation
12 of Title 21, United States Code, Section 841(a)(1) and
13 []B1B8, possession with intent to distribute 219-grams of
14 actual methamphetamine.

15 I believe the initial presentence
16 investigation report began with a base offense level of
17 28. The government filed its objections pointing out to
18 probation that the weight was actual methamphetamine.
19 The probation officer subsequently revised his report and
20 filed an addendum to the presentence report making that
21 correction. Now, the base offense level is 34, and the
22 court concurs with that. There are no adjustments.
23 Ms. Medina falls within criminal history category 1. She
24 has no criminal history points, and the suggested range,
25 then, is 151 to 188 months.

1 Now, Ms. Medina, have you seen the presentence
2 investigation report prepared by probation and disclosed
3 to the parties on March 19 and March 27th of this year?
4 Looks like this.

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Excellent. All right.

7 And the court has read the presentence report,
8 the addendum to that report and its revision in addition
9 to the revision to the sentencing recommendations. The
10 court has also reviewed the government's sentencing
11 position papers. The government recommends a sentence at
12 the low end of the range, five years of supervised
13 release and, of course, the statutory assessments.

14 And the court has received Ms. Medina's
15 sentencing position papers. That was followed up by
16 supplemental letters regarding sentencing, and, then, of
17 course, this morning, I was handed yet additional letters
18 and photographs of Ms. Medina at play.

19 Okay. Before we get into a discussion of
20 3553(a), I will let the parties know -- well, first of
21 all, I want to know whether or not there is any objection
22 to the guidelines range as determined by probation, a
23 guidelines based upon offense level of 34 and criminal
24 history category of 1.

25 Any objection to that from the government?

1 MS. EL-AMAMY: No, your Honor.

2 THE COURT: From the defense?

3 MR. WALSH: Yes, your Honor. In my sentencing
4 memorandum, I filed a request that the court grant a
5 downward reduction for minor role.

6 THE COURT: As far as we have gone so far, is
7 there any objection?

8 MR. WALSH: As to the numbers up to that point in
9 time, as long as they are not the final numbers.

10 THE COURT: No. They are not the final numbers.
11 I just want to know.

12 MR. WALSH: Yes, your Honor. And I, as to whether
13 the guideline is 28 or 34, I think that there was --

14 THE COURT: That is where we are.

15 MR. WALSH: I think there was evidence introduced
16 during the course of the trial by way of stipulation that
17 the 219-grams was actual methamphetamine. So I think
18 that was a fact proven during the trial. So I have no
19 way of contesting that.

20 THE COURT: Okay. Now, let's talk about
21 objections -- I'm sorry -- adjustments which you believe
22 should have been applied which were not. I have read
23 your papers, and you raise a number of points, all of
24 which culminate in a recommendation for a sentence of no
25 more than 63 months. And I am not sure what we do about

1 the statutory minimum of 120, but I will let you go ahead
2 and make your arguments for the record.

3 MR. WALSH: Yes, your Honor.

4 I think that this is an appropriate case for
5 an adjustment of two levels for minor role. The court
6 heard all of the evidence during the course of the trial,
7 and I think it was pretty clear that Carlos Rivera was
8 the primary person conducting the drug trafficking at the
9 location. And on the day that the 219-grams were brought
10 to the house, they were brought by Carlos Rivera who
11 picked them up for another codefendant in the case, drove
12 them to the house.

13 And when he got to the house and Ms. Medina
14 found out that he had brought drugs into the house, she
15 told him -- and these were from the wiretap calls later
16 where she was telling other people that she told Carlos
17 Rivera to get that stuff out of the house. She didn't
18 want it in the house where her children were.

19 And there was also a later wiretap where she
20 was telling other people that when the police came and
21 found the drugs and arrested Carlos Rivera that she
22 didn't even know how much the amount of drugs was.

23 And so I think in determining whether a minor
24 role is appropriate, you look at the defendant's access
25 and participation in the crime. And her participation at

1 most would be to acquiesce to the drug trafficking
2 activity of her husband as to that 219-grams. And that
3 is the one that really drives up the guideline range.

4 And I think that the court should focus on did
5 she have a minor role in relation to that because it is
6 true that the government did offer other transcripts of
7 telephone calls from days later after Carlos Rivera was
8 under arrest and in custody where those calls indicated
9 that Ms. Medina attempted to collect money and to
10 continue on the operation of some of the drug trafficking
11 that her husband had begun before he had been placed in
12 custody.

13 But none of those telephone calls really could
14 fix the amount of the drugs as to whether we were talking
15 a large amount or a small amount. The one clear thing we
16 have is the 219 grams. Then, if you look at Ms. Medina's
17 participation in that, it is very, very little, merely
18 acquiescence to allowing her husband to continue in that
19 business without too large of an objection. She did
20 object to it coming into the house, and then he put it
21 out in the trunk of the car.

22 So I think that in comparing the roles of the
23 defendants, I think that she has a minor role. If the
24 court does grant a minor role, it would not only reduce
25 the offense level by two levels for minor role, there

1 would also be adjustment under the 2D1.1 section. When a
2 defendant has a minor role and the guideline offense is
3 34, then you reduce it another three. So that is a five
4 level reduction that we are asking for that would bring
5 it down from a level 34 to a level 29. And at a level
6 29, the guideline range is below the mandatory minimum
7 120. It is 87 to 108.

8 THE COURT: So what do we do about the mandatory
9 minimum?

10 MR. WALSH: And then the mandatory minimum, while
11 the case was pending, the best that I could come up with
12 was that a bill has been introduced by Congress by
13 Senators Paul and Leahy to essentially eliminate the
14 mandatory minimum and return it back to the old
15 sentencing procedures where the judge has total
16 discretion under 3553 to grant a sentence under the
17 mandatory minimum. I agree that is not the law right
18 now.

19 But I wanted to clearly object to the
20 mandatory minimum so that if at some later point in time
21 this does become law and it becomes retroactive, I would
22 be on record that there is an objection to the court
23 following the mandatory minimum in this case. And we are
24 asking the court to use the 3553 factors.

25 I don't know whether the bill has -- I don't

1 know whether it will be retroactive.

2 THE COURT: They haven't done anything in DC yet.
3 Why should they start working now?

4 MR. WALSH: If we do, I want to be on record that
5 we object to the mandatory minimum. And we would like to
6 get the benefit of any change in the law because based
7 upon this justice safety valve act --

8 THE COURT: You weren't suggesting that the court
9 has any discretion?

10 MR. WALSH: No. But I think it is important for
11 the court to -- that if the guidelines are below the
12 mandatory minimum, the court -- I am asking the court to
13 put it on the record that her guidelines should be below
14 the mandatory minimum. She should be granted a minor
15 role, and the final offense level should be 29 and the
16 guideline range should be 87 to 108. And if the court
17 would make that finding then if there was a later change
18 in the law, then the change would be very material to a
19 possible resentencing at some future date.

20 THE COURT: Okay, Mr. Walsh.

21 MS. EL-AMAMY: In terms of the minor role
22 argument, defendant's argument doesn't address the fact
23 that defendant Medina was the one that hid the keys from
24 law enforcement. She clearly knew that there was
25 methamphetamine in the vehicle for which she was hiding

1 the keys, and she took it upon herself to hide the key.

2 She was not directed by defendant Rivera to do so.

3 That argument also overlooks the fact that
4 defendant Medina knew that defendant Rubio had \$3,000 in
5 cash in his pocket. It is the government's position that
6 defendant Medina played a substantial role in the
7 methamphetamine trafficking activity. She was not
8 one that was merely standing by, but she was one who was
9 taking active actions to lie to law enforcement and
10 prevent them from seizing methamphetamine, seizing drug
11 distribution proceeds that would support her and her
12 family.

13 And she was ready, willing and extremely
14 capable of running the methamphetamine operation once her
15 husband was taken into custody. It is the government's
16 position that no minor role should be given for this
17 defendant, and the government submits on its papers.

18 THE COURT: All right. Thank you. All right.
19 The court's recollection of the evidence at trial more
20 closely aligns with the position taken by the government.
21 So the court is not inclined to grant a minor role
22 reduction.

23 Aside from that, Mr. Walsh, let me tell you
24 this. Right this moment, the court is tentatively
25 incline to impose a low end sentence, but we haven't yet

1 discussed 3553(a). So let's turn our attention to those
2 factors. Okay.

3 MR. WALSH: Yes, your Honor.

4 There are several good things that can be said
5 about Ms. Medina. Number one, she has no prior criminal
6 record at all.

7 THE COURT: Okay.

8 MR. WALSH: And she is the mother of
9 four children. The probation report indicates that she
10 was working at Rite-Aid on the day of her arrest
11 three years ago, and while she was on pretrial
12 supervision, while on bail, she participated in a
13 training program to be trained as a dental assistant. So
14 she was attempting to get educational skills to move on
15 with her life in the future.

16 And the fact remains that for the three years
17 that she was on bail, it wasn't a perfect record. There
18 was one lapse about six months ago where she tested
19 positive for the use of drugs, and she was associated
20 with someone who was associated with the gang. And the
21 court had a hearing on that, but that was just the
22 one hearing in three years. So she had one relapse, but,
23 essentially --

24 THE COURT: Here is the thing. Things that
25 finally get brought to our attention don't mean that is

1 all that has happened. Do you believe that? I don't
2 believe that. I just want you to know. I don't think
3 that every misstep finds its way in court. I think there
4 are lots of missteps before it finally comes to the
5 court's attention. I just want you to know that. Okay.
6 That is my view. So I know your argument is three years,
7 you know, on pretrial release, and she has been an angel
8 except that one misstep. I am not buying that at all.

9 MR. WALSH: Well, she wasn't arrested. I think
10 that is a pretty good indication when someone is
11 reverting back to criminal conduct or not.

12 THE COURT: No. It is not. That is a function of
13 how careless you are. That is all that is. But go
14 ahead. You make your argument. I simply don't buy the
15 fact that you don't get arrested, you have been a model
16 citizen, no.

17 MR. WALSH: I won't use that argument again in the
18 future, your Honor.

19 THE COURT: Okay.

20 MR. WALSH: Then, finally, this is an additional
21 argument concerning her role in the offense, and I think
22 that -- I think even if the court isn't inclined to say
23 she had a minor role, I think it is pretty clear that her
24 involvement was due to her association with Carlos Rivera
25 who is much more active in drug trafficking than she was.

1 And her association, really, revolves around a
2 family association. She has had two children with Carlos
3 Rivera so she had a close relationship with him, and it
4 was that association which I think led her to be involved
5 in criminal activity. And it wasn't something that she
6 thought up on her own. And I think that that may be a
7 mitigating factor that the court could consider.

8 But, most importantly, I think that she has no
9 prior criminal record. I think that is an important
10 point that the court should consider.

11 THE COURT: Okay, Mr. Walsh.

12 All right. Anything from the government?

13 MS. EL-AMAMY: No, your Honor.

14 THE COURT: All right. Ms. Medina, this is also
15 an opportunity for you, ma'am, if you wish to exercise
16 it, to address the court on the issue of your sentence.
17 Matter of fact, let me also tell you this. Yours is the
18 most important voice. Not the lawyers. I know what the
19 lawyers are already going to say. It is you I need to
20 hear from.

21 (Pause in proceedings.)

22 THE DEFENDANT: I just want to apologize to my
23 family that, for everything that I put them through and
24 just ask for little bit of lenience on my sentence. That
25 is about it.

1 THE COURT: Okay. Having considered both the
2 sentencing factors enumerated at Title 18, United States
3 Code, Section 3553(a) and under the U.S. Sentencing
4 Guidelines Section 5G1.1B, the advisory guidelines range
5 of 151 to 188 months based upon an offense level of 34
6 and a criminal history category of 1, it is ordered that
7 the defendant shall pay to the United States a special
8 assessment of \$400 which is due immediately. All fines
9 are waived as it is found that such a sanction would
10 place an undue burden on defendant's dependents.

11 Pursuant to the Sentencing Reform Act of 1984,
12 it is the judgment of the court that defendant Jessica
13 Medina is hereby committed on Counts 1, 2, 5 and 10 of
14 the indictment to the custody of the Bureau of Prisons to
15 be imprisoned for a term of 151 months. This term
16 consists of 120 months each on Counts 1 and 2 and 151
17 months on Counts 5 and 10, all to be served concurrently.

18 Upon release from imprisonment, defendant
19 shall be placed on supervised release for a term of
20 five years. This term consists of three years on each of
21 Counts 1 and 2 and five years on each of Counts 5 and 10,
22 all such terms to run concurrently under the following
23 terms and conditions:

24 One, defendant shall comply with the rules and
25 regulations of the U.S. Probation Office and General

1 Order 05-02.

2 Two, during the period of community
3 supervision, defendant shall pay the special assessment
4 in accordance with this judgment's orders pertaining to
5 such payment.

6 Three, defendant shall refrain from any
7 unlawful use of a controlled substance. Defendant shall
8 submit to one drug test within 15 days of release from
9 imprisonment and at least two periodic drug tests
10 thereafter not to exceed eight tests per month as
11 directed by the probation officer.

12 Four, defendant shall participate in an
13 outpatient substance abuse treatment and counseling
14 program that includes urinalysis, breath and/or sweat
15 patch testing as directed by the probation officer.
16 Defendant shall abstain from using illicit drugs and
17 alcohol and abusing prescription medications during the
18 period of supervision.

19 Five, during the course of supervision, the
20 probation officer with the agreement of the defendant and
21 defense counsel may place the defendant in a residential
22 drug treatment program approved by the U.S. Probation
23 Office for the treatment of narcotic addiction or drug
24 dependency.

25 Six, as directed by the probation officer,

1 defendant shall pay all or part of the cost of treating
2 her drug dependency to the after care contractor during
3 the period of community supervision. Defendant shall
4 provide payment and proof of payment as directed by the
5 probation officer.

6 Seven, defendant may not associate with anyone
7 known to her to be a Black Angels gang member and others
8 known to her to be participants in the Black Angels
9 gang's criminal activities with the exception of family
10 members. She may not wear, display, use or possess any
11 gang insignia, emblems, badges, buttons, caps, hats,
12 jackets or vests or any other clothing that defendant
13 knows evidence affiliation with the Black Angels gang.
14 She may not knowingly display any Black Angels signs or
15 gestures.

16 Eight, as directed by the probation officer,
17 defendant shall not be present in any area known to her
18 to be a location where members of the Black Angels gang
19 meet and/or assemble.

20 Nine, defendant shall cooperate in the
21 collection of a DNA sample from herself.

22 The court authorizes the probation office to
23 disclose the presentence report to the substance abuse
24 treatment provider to facilitate defendant's treatment
25 for narcotic addiction or drug dependency. Further

1 redisclosure of the presentence report by the treatment
2 provider is prohibited without the consent of this court.

3 It is ordered that the defendant surrender
4 herself to the institution designated by the Bureau of
5 Prisons on or before 12:00 noon, May 10 of 2013. In the
6 absence of such designation, defendant shall report on or
7 before the same date and time to the United States
8 Marshal located at the Roybal Federal Building, 255 East
9 Temple Street, Los Angeles, California. The court has
10 concluded that the defendant does not pose a flight risk
11 or pose a danger to the community.

12 It should also be noted that the court has
13 selected a sentence at the low end of the range for many
14 of the same reasons articulated by defense counsel with
15 respect to this defendant's relative involvement in this
16 Rico scheme.

17 The court is also mindful that under 18 U.S.C.
18 Section 3553(a), the sentence imposed should be
19 sufficient but not greater than necessary to accomplish
20 the purposes of 3553(a)(2).

21 The court has considered the nature and
22 circumstances of the offense, the history and
23 characteristics of the defendant. The court has
24 recognized the need for the sentence imposed to reflect
25 the seriousness of the offense, that it should promote

1 respect for the law, that it should provide just
2 punishment for the offense. It should afford adequate
3 deterrence to future criminal conduct and protect the
4 public from further crimes of the defendant.

5 The court has assessed the various kinds of
6 sentences available as well as the guidelines sentencing
7 range. The court has also examined the sentences handed
8 down on other defendants in this matter so as to avoid
9 unwarranted sentence disparities among defendants with
10 similar records who have been found guilty of similar
11 conduct.

12 Now, before the court is a 27-year-old who is
13 facing her first criminal conviction for RICO conspiracy,
14 RICO and conspiracy to possess with intent to distribute
15 219-grams of methamphetamine.

16 It appears that the defendant's involvement
17 with the Black Angels was fueled by her intimate
18 relationship of nine years with a Black Angels gang
19 member, codefendant Carlos Rivera. Nonetheless, there is
20 no information received by the court that would suggest
21 that she was coerced by Rivera to associate with other
22 gang members or to assist him in the possession of
23 219-grams of actual methamphetamine.

24 Further, as they were living together, it
25 could be argued that she was privy to Mr. Rivera's

1 conversations and transactions involving his possession
2 of heroin, additional amounts of methamphetamine and
3 firearms.

4 In aggravation, her known involvement with the
5 Black Angels enterprise by its very nature heightens the
6 propensity for harm to others. In addition, the
7 defendant's behavior in the instant offenses indicates
8 that she poses a threat to the community in light of the
9 dangers associated with methamphetamine.

10 In mitigation, notwithstanding the instant
11 offenses, it appears that the defendant has led a
12 relatively law abiding lifestyle. She has a supportive
13 family and four dependent children. The defendant's
14 mother advises that she and the defendant's sister will
15 take care of the children while the defendant is
16 incarcerated.

17 As previously noted, the defendant's
18 involvement in the instant offense was fueled by her
19 relationship with the father of her two youngest
20 children. It is apparently based on the above that she
21 does not appear heavily entrenched in criminal activity
22 but, rather, is on the fringes because of her
23 relationship with Rivera.

24 You have the right to appeal your conviction
25 and your sentence. With few exceptions, your notice of

1 appeal must be filed within 14 days of judgment being
2 entered.

3 Do you understand that, ma'am?

4 THE DEFENDANT: Yes.

5 THE COURT: If you are unable to afford a
6 transcript of the record in this case, one will be
7 provided at government expense. If you are unable to pay
8 the cost of an appeal or the filing fee, you may apply
9 within 14 days for a waiver. If you do not have an
10 attorney to act on your behalf and if you request it, the
11 clerk of the court will prepare and file a notice of
12 appeal on your behalf.

13 Again, you must make the request within 14
14 days. The notice of appeal must designate the judgment
15 or order appealed from and the fact that you are
16 appealing to the court of appeals. It should also
17 designate that portion of the proceedings not already on
18 file that you deem necessary for the reporter to include.

19 Also, in its consideration, the court has
20 evaluated the sentencing guidelines as required by Title
21 18, United States Code, Section 3553(a)(4) and finds the
22 calculations of suggested sentence therein for this
23 defendant under the present circumstances to be
24 reasonable. The court therefore sentences the defendant
25 as previously stated.

1 Any objection from the government to the
2 defendant remaining free on bond on the same terms and
3 conditions until her surrender date on May 10th?

4 MS. EL-AMAMY: The government takes no position.

5 THE COURT: All right. Thank you.

6 Is there anything further from the government?

7 MS. EL-AMAMY: No, your Honor.

8 THE COURT: All right. Anything further,
9 Mr. Walsh?

10 MR. WALSH: Yes, your Honor.

11 THE COURT: Wait a minute. I neglected to mention
12 two things, recommendations that the court intends to
13 make to the Bureau of Prisons. One is the 500-hour
14 residential drug treatment program offered by the Bureau
15 of Prisons. And the other is a recommendation for a
16 Southern California placement to facilitate visitation
17 with her children.

18 Was there anything else?

19 MR. WALSH: Yes. There was one other thing, your
20 Honor. My client's daughter, one of her four children,
21 is graduating on May 21, and she wanted to know if she
22 could have a surrender date of May 24.

23 THE COURT: Graduating from what?

24 THE DEFENDANT: Sixth grade.

25 THE COURT: Okay.

1 MR. WALSH: So the request is that her surrender
2 date be changed from May 10 to May 24.

3 THE COURT: All right. Done.

4 MR. WALSH: She also mentioned that she is under
5 house arrest and now that she is going into custody, I
6 guess there is some things that have to be put in
7 storage, and she wanted to help with getting those
8 preparations. And she wanted to know it was possible to
9 have her house arrest changed to curfew during this last
10 period of time?

11 THE COURT: I don't want to get involved with
12 that. She can deal with probation on that. All right.

13 MR. WALSH: All right.

14 THE COURT: All right. We are done.

15 (Proceedings concluded.)
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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: June 13, 2013

/s/ Katie Thibodeaux, CSR No. 9858, RPR, CRR

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate CM/ECF system.

I certify that all participants in the case are register CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Joseph F. Walsh
JOSEPH F. WALSH